

CHAMBER ACTION

1 The Committee on Agriculture recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to citrus canker; amending s. 120.80,
7 F.S.; excluding certain statements and actions by the
8 Department of Agriculture and Consumer Services from
9 application of certain rules; creating s. 933.40, F.S.;
10 providing definitions; providing for issuance of
11 agriculture warrants for certain purposes under certain
12 circumstances; requiring probable cause; providing
13 criteria procedures for issuing such warrants; providing
14 certain guidelines and limitations on required notice;
15 providing for ex parte hearing for certain warrant
16 applications; providing a time limit on the effectiveness
17 of certain warrants; providing a criminal penalty for
18 refusal to permit execution of a warrant; prohibiting
19 certain persons from giving certain information as a
20 confidential informant under certain circumstances;
21 providing construction; amending s. 581.184, F.S.;
22 authorizing the destruction of certain trees; providing a
23 notice requirement to certain property owners; preempting

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24 regulation of tree removal and destruction to the state;
25 providing an effective date.

26

27 Be It Enacted by the Legislature of the State of Florida:

28

29 Section 1. Paragraph (c) is added to subsection (2) of
30 section 120.80, Florida Statutes, to read:

31 120.80 Exceptions and special requirements; agencies.--

32 (2) DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES.--

33 (c) The provisions of ss. 120.54 and 120.56 shall not
34 apply to any statement or action by the department in
35 furtherance of its duties pursuant to s. 581.184(2).

36 Section 2. Section 933.40, Florida Statutes, is created to
37 read:

38 933.40 Agriculture warrants.--

39 (1) As used in this section:

40 (a) "Agriculture warrant" means an order in writing, in
41 the name of the people, signed by a person competent to issue
42 search warrants pursuant to s. 933.01, authorizing department
43 employees to exercise any duty or power granted by chapter 581
44 or chapter 585 with respect to any plant pest or animal pest
45 identified in the warrant, including, but not limited to,
46 conducting inspections, setting traps, examining records,
47 testing, dipping, disinfecting, treating, identifying,
48 quarantining, taking samples and measurements, and seizing or
49 destroying property.

50 (b) "Animal pest" means any biological or chemical residue
51 as defined in s. 585.01(4), pathogenic organism or virulent

52 organism as defined in s. 585.01(15), or any transmissible,
 53 communicable, contagious, or infectious disease as described in
 54 s. 585.01(18).

55 (c) "Department" means the Department of Agriculture and
 56 Consumer Services.

57 (d) "Electronic signature" means any letters, characters,
 58 symbols, or process manifested by electronic or similar means
 59 and attached to or logically associated with a record and
 60 executed or adopted by a person with the intent to sign the
 61 record.

62 (e) "Parcel number" means the distinct parcel
 63 identification number assigned to a parcel of property by the
 64 property appraiser for the county in which the property is
 65 located.

66 (f) "Plant pest" means any plant pest, noxious weed, or
 67 arthropod declared a nuisance by the department pursuant to s.
 68 581.031(6), or any plant infected or exposed to infection as
 69 defined in s. 581.184(1).

70 (g) When capitalized, "Section" has the meaning ascribed
 71 in 43 U.S.C. s. 751.

72 (2) An agriculture warrant shall be issued only upon
 73 application supported by affidavit and shall describe the street
 74 address and city or the parcel number and county of each
 75 property to be subject to the warrant and each type of plant
 76 pest or animal pest which will be the subject of the warrant.

77 (3) An agriculture warrant shall be issued only upon
 78 probable cause. For the issuance of one or more agriculture

79 | warrants, any of the following findings may be sufficient to
 80 | support a determination of probable cause:

81 | (a) The property to be subject to the agriculture warrant
 82 | is located within an area subject to a quarantine which has been
 83 | established by the department with respect to the plant pest or
 84 | animal pest that is the subject of the warrant; or

85 | (b) Under all of the circumstances set forth in the
 86 | affidavit, there is a fair probability the property subject to
 87 | the agriculture warrant:

88 | 1. Contains a plant pest;

89 | 2. Is located in an area which may reasonably be suspected
 90 | of being infested or infected with a plant pest due to its
 91 | proximity to a known infestation, or if it is reasonably exposed
 92 | to infestation;

93 | 3. Is located in a Section in which the department has
 94 | diagnosed the presence of one or more plants infected with
 95 | citrus canker as defined in s. 581.184(1)(a) or is located in a
 96 | Section adjacent thereto;

97 | 4. Contains animals affected with any animal pest or which
 98 | have been exposed to and are liable to spread the animal pest;
 99 | or

100 | 5. Contains any other property that is liable to convey an
 101 | animal pest.

102 | (4) A single warrant application shall be sufficient for
 103 | the issuance of multiple agriculture warrants if the application
 104 | for the warrants describes the street address and city or the
 105 | parcel number and county of each property subject to an

106 agriculture warrant and all such properties are located within
 107 the same county.

108 (5) Agriculture warrants may be signed by any person
 109 competent to issue search warrants under s. 933.01, either
 110 manually, by signature stamp, or by electronic signature. The
 111 judge or magistrate, upon examination of the application and
 112 proofs submitted, if satisfied that probable cause exists for
 113 the issuing of one or more agriculture warrants, shall issue
 114 such agriculture warrants with his or her signature and office
 115 affixed thereto. Such agriculture warrants may be served and
 116 executed by employees of the department, with the assistance of
 117 third parties supervised by department employees, and shall
 118 authorize department employees with such assistance to undertake
 119 all actions authorized by the warrant.

120 (6) Prior notice to the owner or occupant of the property
 121 to be subject to the agriculture warrant, or to any other
 122 person, of the application for agriculture warrants shall not be
 123 required as a condition for the issuance of warrants under this
 124 section. At the time of execution of the agriculture warrant, a
 125 copy, including any applicable renewal or extension thereof
 126 under subsection (8), shall be delivered to a person 18 years of
 127 age or older who is occupying or living on the property subject
 128 to the warrant or shall be attached to a conspicuous place on
 129 that property.

130 (7) The department shall be entitled to an ex parte
 131 hearing forthwith on an application for an agriculture warrant.

132 (8) An agriculture warrant shall be effective for 60 days
 133 and shall authorize multiple executions of the warrant prior to

134 its expiration. An agriculture warrant may be extended or
 135 renewed by the judge or magistrate who signed and issued the
 136 original warrant upon satisfaction of such official that
 137 probable cause continues to exist for the reissuance of the
 138 warrant. Such warrant must be returned to the issuing official
 139 prior to the expiration date specified in the warrant or within
 140 the extended or renewed time.

141 (9) An agriculture warrant shall not:

142 (a) Be executed between 7 p.m. of any day and 7 a.m. of
 143 the succeeding day, or on any legal holiday;

144 (b) Authorize the entry into or inspection of the interior
 145 of any occupied dwelling or any automobile; or

146 (c) Be issued in blank.

147 (10) Any person who willfully refuses to permit execution
 148 of any agriculture warrant commits a misdemeanor of the second
 149 degree, punishable as provided in s. 775.082 or s. 775.083.

150 (11) A person executing an agriculture warrant pursuant to
 151 this section shall not give information as a confidential
 152 informer, testify as a witness, or execute an affidavit as a
 153 predicate for the issuance of a criminal search warrant or for
 154 probable cause to search any dwelling or other building without
 155 a criminal search warrant.

156 (12) Nothing in this section shall be construed to
 157 restrict the powers granted by general law to an agency of the
 158 state, or to a unit of local government acting on behalf of such
 159 agency pursuant to a contract with the agency, to conduct
 160 inspections with or without warrant as authorized by general
 161 law.

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162 Section 3. Subsections (2) and (4) of section 581.184,
163 Florida Statutes, are amended to read:

164 581.184 Adoption of rules; citrus canker eradication;
165 voluntary destruction agreements.--

166 (2)(a) The department shall remove and destroy all
167 infected citrus trees and all citrus trees exposed to infection.
168 The department may destroy by chipping trees removed pursuant to
169 this section. Notice of the removal of such trees, by immediate
170 final order, shall ~~may~~ be provided to the owner of the property
171 on which such trees are located. An immediate final order issued
172 by the department pursuant to this section shall notify the
173 property owner that the citrus trees that are the subject of the
174 immediate final order will be removed and destroyed unless the
175 property owner, no later than 10 days after delivery of the
176 immediate final order pursuant to subsection (3), requests and
177 obtains a stay of the immediate final order from the district
178 court of appeal with jurisdiction to review such requests. The
179 property owner shall not be required to seek a stay of the
180 immediate final order by the department prior to seeking the
181 stay from the district court of appeal.

182 (b) Regulation of the removal or destruction of citrus
183 trees pursuant to this section is hereby preempted to the state.
184 No county, municipal, or other local ordinance or other
185 regulation that would otherwise impose requirements,
186 restrictions, or conditions upon the department or its
187 contractors with respect to the removal or destruction of citrus
188 trees pursuant to this section shall be enforceable against the
189 department or its contractors. ~~Notwithstanding the provisions of~~

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190 ~~paragraph (a), and for the 2003-2004 fiscal year only, notice of~~
 191 ~~the removal of infected citrus trees and citrus trees exposed to~~
 192 ~~infection, by immediate final order, shall be provided to the~~
 193 ~~owner of the property on which such trees are located. This~~
 194 ~~paragraph expires July 1, 2004.~~

195 (4) Simultaneously with the delivery of an immediate final
 196 order, the department shall also provide the following
 197 information to a property owner:

198 (a) The physical location of the infected tree which has
 199 necessitated removal and destruction of the property owner's
 200 tree.

201 (b) The diagnostic report that resulted in the
 202 determination that the infected tree is infected with the citrus
 203 canker.

204 ~~(c) The distance between the infected citrus tree and a~~
 205 ~~property owner's exposed citrus trees.~~

206 Section 4. This act shall take effect upon becoming a law.